

Mark C. Manning  
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 Counsel for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
 DISTRICT OF ALASKA

CITICAPITAL COMMERCIAL CORP,	)	IN ADMIRALTY No. A-04-0147 CV (RRB)
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
EGEGIK SPIRIT, official number	)	
299957, her equipment, gear, furniture,	)	
apparel, fixtures, tackle, boats, machinery	)	
anchors and all appurtenances, <i>in rem, et al.</i> , )	)	
	)	
Defendants.	)	
	)	

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**NOTICE OF INTENT TO FILE OBJECTIONS**

Plaintiff takes this opportunity to apprise the court of its intention to file objections to major new findings and recommendations that appear in the Magistrate Judge's February 27, 2006, FINAL RECOMMENDATION in this matter, that did not appear in the January 20, 2006, RECOMMENDATION. These new findings and recommendations concern a reversal of the original recommended disposition in Plaintiff's favor on Defendants' counter-claims for wrongful arrest, which actually manifest themselves in Defendants' briefing as the factually distinct and unpled affirmative defense of modification of the promissory note at issue. The recommended disposition now is to deny the motion against the counter-claim due to witness credibility issues.

Plaintiff believes it is entitled under 28 U.S.C. § 636(b)(1) to file objections within 10 days of service of these new proposed findings and recommendations. But counsel is not aware of the court's practice and expectations in respect of the filing of objections to new proposed findings and recommendations, when the new proposed findings and

recommendations first appear in a subsequent revision of earlier proposed findings and recommendations. Accordingly, it may assist the court to know that the objections are coming.

Plaintiff notes in particular that the court may infer Plaintiff does not intend to object from the fact that Plaintiff did not file a reply to Defendants' objections to the January RECOMMENDATION. A reply would have been filed on Plaintiff's behalf but for Plaintiff's counsel's lack of knowledge objections had been filed due to his accidental deletion of the ECM notice of the filing of Defendants' objections. Exhibit 1, Declaration of Mark C. Manning.

If Plaintiff's upcoming objections are regarded as late for any reason notwithstanding the fact that they will be filed within 10 days of service of the new findings and recommendations, the district court has the discretion to allow and consider a late filing. *Rodriguez v. Bowen*, 857 F. 2d 275, 276-277 (5<sup>th</sup> Cir. 1988); 14 *Moore's Federal Practice* § 72.10[3][e][I]. Indeed, it may be an abuse of discretion not to consider late objections, where they are not egregiously late and there is no prejudice to the other party. *Kruger v. Apfel*, 214 F. 3d 784, 786-787 (7th Cir. 2000). The new findings and recommendations will result in trial of Defendants' counter-claim, if adopted and if the counter-claims are not eliminated by future action. Plaintiff urges that the interest of judicial economy and the avoidance of the expenditure of the parties' resources warrant the exercise of this discretion to insure a fuller airing of the issues, which Plaintiff believes will result in a ruling in its favor on Defendants' counter-claims, obviating the need for trial.

Plaintiff also notes respectfully that it requested oral argument on its motions, recognizing in particular that a number of legal and evidentiary issues bear on the disposition of the motions against Defendants' counter-claims and believing the court would be assisted by discussion of the evidence and legal issues controlling the outcome. In the January RECOMMENDATION, the requested argument was denied, because the Magistrate Judge initially concluded that a theory not argued by any party readily disposed of Defendants' defenses against Plaintiff's attack on their counter-claims. The new findings and recommendations now moot the basis for that denial of Plaintiff's request for oral argument.

Accordingly, Plaintiff again requests oral argument, at least on its motions against Defendants' counter-claims.

s/ Mark C. Manning

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CERTIFICATE OF SERVICE

I hereby certify that, on 3/3/06 to, a copy  
of the foregoing Notice of Intent  
was served electronically on Woodbine Alaska  
Fish Co. and on Guy Ferrari, Inc.

s/Mark C. Manning